

**MINUTES**

**MONTANA SENATE  
59th LEGISLATURE - REGULAR SESSION**

**FREE CONFERENCE COMMITTEE ON SENATE BILL 114**

**Call to Order:** By **CHAIRMAN VICKI COCCHIARELLA**, on April 18, 2005  
at 11:06 A.M., in Room 335 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Vicki Cocchiarella, Chairman (D)  
Sen. Duane Grimes (R)  
Sen. Jon Tester (D)  
Rep. Christopher Harris, Chairman (D)  
Rep. Joe McKenney (R)  
Rep. John Parker (D)  
Rep. Jon Sonju (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Peg Holwick, Secretary  
John MacMaster, Legislative Staff

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Free Conference Committee on SB 114

**REP. CHRISTOPHER HARRIS, HD 66**, said that the major portion of the amendments were made in the House Judiciary Committee, and they provided the penalties for insurance fraud. The House floor amendments were meant to clarify what entity was considered to be an authorized insurance producer.

**EXHIBIT**(frs83sb0000a01)

**SEN. DUANE GRIMES, SD 39**, asked if the amendments were negotiated between the stakeholders. **REP. HARRIS** said the amendments put on in the House Judiciary Committee were not subject to any negotiations. However, he worked with **John MacMaster, Staff Attorney, Legislative Services Division (LSD)**, on cleanup provisions.

**SEN. VICKI COCCHIARELLA, SD 47**, asked if the amendments were accepted by Blue Cross Blue Shield of Montana. **REP. HARRIS** said, yes, and that they were also accepted by the State Auditor's Office.

**REP. JOE MCKENNEY, HD 18**, requested a summary of the amendments adopted by the House Judiciary Committee. **REP. HARRIS** said that during the hearing, the Committee heard testimony and many examples from the General Accounting Office (GAO) of insurance fraud that, typically, preyed on the elderly. To him, it was a double whammy because, not only are predators not authorized to sell insurance policies, they are taking elderly peoples money and providing them with a false sense of security that there is an insurance policy available to them. He added that the amendments are not aimed at legitimate insurance carriers who are following the rules but the scam artists.

**SEN. JON TESTER, SD 15**, said that the insurance industry felt that they were being inadvertently impacted by HB 114. If that is the case, it needs to be addressed. However, HB 114 also needs enough "teeth" to nail the people who are breaking the law.

**SEN. GRIMES** asked if the technical amendments were agreed to. **REP. HARRIS** said that the technical amendments were meant to be clean up language and their intent was to separate theft from deceptive practices. **Mr. MacMaster** said that one of the problems with HB 114 is that it was not written by someone who specializes in criminal law. He suggested that the Committee review the latest set of amendments because they do not address the House Judiciary amendments or the Committee of the Whole amendments. He felt they were another attempt to take a run at the bill itself.

**SEN. COCCHIARELLA** asked for a clarification of the bill and the amendments that came from the House. **Mr. MacMaster** believed that

the sections of HB 114, dealing with the insurance codes, along with the House amendments makes for a better bill.

**SEN. GRIMES** feared that the Committee may end up with an entirely new set of amendments that defines a problem without knowing the definitions since there is no court case precedent in many of the other Titles that make a reference back to the criminal code. **Mr. MacMaster** said that when the criminal codes were rewritten, that was taken into account. Title 45 criminal codes apply to criminal offenses that appear in any other code so that definitions and principles could apply.

*{Tape: 1; Side: A; Approx. Time Counter: 16.1 - 17.5}*

**REP. JOHN PARKER, HD 23**, said that some of the solution for the Committee is already provided for in the criminal codes; i.e., 45-6-301(6)(a), MCA, provides that a person commits the offense of theft when they commit insurance fraud as provided under the statute. He felt that all of the amended language to SB 114 will automatically become a definition of felony theft in the state code, implicating all criminal code definitions that are needed.

*{Tape: 1; Side: A; Approx. Time Counter: 17.5 - 20.3}*

**Jacqueline Lenmark, American Insurance Association (AIA)**, said that the Association had no problem with the intent of SB 114, but they are of the opinion that the bill was unnecessary to address the problem because the criminal codes are sufficient enough. However, the problem with the bill, as amended from the House, is adding criminal penalties in the insurance fraud sections--Sections 1, 2, and 3--that apply to more than just the activity for which the bill was targeted. She felt that it was outside the scope and purpose of the bill. The AIA's proposal is that the Committee not attempt to amend the insurance fraud sections. SB 114 is attempting to get at individuals who are acting as insurers without certificate of authority. The AIA prefers to leave the fraud sections in the insurance codes alone and simply amend the sections that requires a company or entity transacting insurance to have the certificate of authority and make it a crime to not have one. She said that there is a benefit for the regulator to do it that way. She added that fraud is much harder to prove versus simply proving that someone does not have the required certificate of authority.

*{Tape: 1; Side: A; Approx. Time Counter: 20.9 - 24.2}*

**Ms. Lenmark** added that the AIA also does not have a problem with **Mr. MacMaster's** suggestion about the "purposely and knowing" standards. The AIA proposes reinserting "purposely" so that the

sections would more closely parallel the statutes in the criminal code. Another issue that was not apparent to **Mr. MacMaster**, members of the House Judiciary Committee, or BCBSMT, is that not all insurers are required to have a certificate of authority to be lawfully acting within the insurance codes in Montana. There are a number of insurance entities that are expressly permitted to transact insurance in Montana without a certificate of authority. She requested that those insurance entities not be swept into the mix, making their activities, somehow, susceptible to criminal action.

**{Tape: 1; Side: A; Approx. Time Counter: 24.2 - 26.3}**

**REP. HARRIS** said that the way the House amendments were drafted included the language "except as authorized" which would have covered everyone. The language that was inserted was at the behest of the insurance companies. He felt that the Committee could go back to the original House language which would cover everyone's concerns.

**SEN. GRIMES** asked if lines 8 through 17 on page 2 would be removed. **REP. HARRIS** said that the original language "except as authorized" was meant to cover any insurance operation that is appropriately authorized by the Insurance Commissioner. However, the insurance industry wanted the language more specific. He felt that the Committee could go back to the original House language which covers everything appropriately.

**{Tape: 1; Side: A; Approx. Time Counter: 26.3 - 28.0}**

**Mr. MacMaster** said that striking Section 1 through 3 of the bill is not an issue. The issue raised by **Ms. Lenmark** is that if a person is an insurer, the person must have a certificate of authority, "except as otherwise provided in the code". In other words, if a person is an insurer acting in this state and doing things that the person does not need a certificate of authority for, then the language should expressly state "as otherwise provided in the code".

**{Tape: 1; Side: A; Approx. Time Counter: 28.0 - 29.5}**

**Jerry Driscoll, Deputy State Auditor, State Auditors Office**, said that the language "as otherwise provided in the code" would be sufficient.

**{Tape: 1; Side: B; Approx. Time Counter: 2.1 - 5.5}**

**SEN. GRIMES** and **REP. PARKER** felt that the best place to start would be to address **Ms. Lenmark's** first suggestion that adding

criminal penalties into the insurance codes would be inappropriate.

**{Tape: 1; Side: B; Approx. Time Counter: 5.5 - 11.3}**

**SEN. COCCHIARELLA** saw no problems with the language of SB 114 because the penalty provisions are there if somebody is not doing legitimate business in the state. She asked where specifically does SB 114 go beyond those penalties. **Ms. Lenmark** stated the following:

- (1) The State Auditor's Office is a criminal justice agencies and, by virtue of statute, has the authority to prosecute all violations under the insurance code.
- (2) SB 114 goes beyond those penalties in Section 1 where the penalty has been specified and arguably increased in subsection (2).
  - (a) Subsection (2) applies not only to the act that is prohibited in SB 114 but also applies to everything else within the section. Expanding that penalty is beyond the scope and purpose of the Title of SB 114.
- (3) Section 1 does not include those insurers who are lawfully allowed to transact insurance without a certificate of authority.
- (4) Section 2 of SB 114 is not needed and should be deleted because the bill is adequately drafted to provide for the penalties for Section 1.
- (5) Section 3 should also be deleted because the penalty section applies to more than what the bill is addressing.
- (6) AIA can agree to Section 4 as currently drafted.

**{Tape: 1; Side: B; Approx. Time Counter: 11.3 - 18.8}**

**SEN. GRIMES** asked if an acceptable alternative could be to strike the subsection (2) penalty section and expand the language to include those entities who are caught up in the licensure confusion. **Ms. Lenmark** feared that every infraction or deviation of the insurance code would somehow be defined by the section to be fraud and a crime. This is not what SB 114 is about. She suggested that **SEN. GRIME'S** alternative would be unacceptable.

**Mr. Driscoll** said that the purpose of the amendments is to kill the bill. The language "IN THIS CODE" on Page 2, line 7, was requested by **Ms. Lenmark**. This amendment raised the problem that **Ms. Lenmark** is discussing, it was removed from SB 114, and she is still arguing that it will penalize any violation of the code.

**{Tape: 1; Side: B; Approx. Time Counter: 18.8 - 18.9}**

**Motion:** REP. PARKER moved to amend SB 114-- Page 2, line 15--(2) a person who knowingly violates subsections (g)(i), (g)(ii), or (g)(iii), commits the offense of insurance fraud and is subject to the additional penalty.

**Discussion:** REP. PARKER said that there is a good policy basis for trying to carve out a distinction between a person who has committed a criminal act by trying to defraud the insurance company and a more serious player who is holding themselves out as a valid insurer and is systematically ripping off large categories of senior citizens.

**Mr. MacMaster** reminded the Committee that it is looking at amendments that were not written by criminal law experts, the insurance codes are an ungodly mess because of it, and they could not be fixed within the context of SB 114.

**SEN. GRIMES** found the language in subsection (g) offensive and felt that it needed to be restructured to actually refer to the offenses that the Committee intends to be included in the definition of "insurance fraud".

**REP. PARKER** viewed **SEN. GRIME'S** proposal as friendly and requested that staff draft an amendment that combines his attempt to carve out a distinction between existing insurance fraud and the new offenses with stiffer penalties as well as **SEN. GRIME'S** request to make the new items affirmative acts rather than omissions.

The Committee recessed at 12:01 p.m. without taking action on **REP. PARKER'S** motion.

**RECONVENE FREE CONFERENCE COMMITTEE ON SB 114**

The Committee reconvened at 3:33 p.m.

**REP. PARKER** withdrew his previous motion.

*{Tape: 2; Side: A; Approx. Time Counter: 0.4 - 0.9}*

**Mr. MacMaster** provided a gray bill and a short synopsis of its content.

**EXHIBIT**(frs83sb0000a02)

**Mr. MacMaster** said that the gray bill incorporates the concerns of **SEN. GRIMES, REP. PARKER, and REP. HARRIS** and the insurance industry and the State Auditor's Offices has agreed to it. It does the following:

- (1) strikes Sections 1, 2, and 3;
- (2) strikes "AND SHALL" through "OR BOTH" in two places;
- (3) strikes "A FELONY" on page 5, line 17, through "OR BOTH" on line 18, and inserts "theft under 45-6-301"; and
- (4) makes corresponding changes in the Title.

**Motion:** **REP. PARKER** moved to insert "punishable as provided in 46-18-213" after the stricken "OR BOTH" on page 4, line 15, and page 5, line 1.

**Discussion:** **REP. PARKER** felt that the language would be more appropriate than just putting it as a felony and leaving it hanging. He said it may not be necessary, but anytime there can be clarity in a section involving criminal code, it is the best way to go.

**REP. MCKENNEY** asked about the penalty under 46-18-213, MCA. **REP. PARKER** said the maximum penalty under that provision is a maximum of 10 years and maximum fine of \$50,000, which is the same penalty provided under felony theft.

**Vote:** **REP. PARKER'S** amendment carried unanimously by voice vote.

**Motion/Vote:** **REP. HARRIS** moved the adoption of the Committee report. Motion carried unanimously by voice vote.

**ADJOURNMENT**

Adjournment: 3:49 P.M.

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SEN. VICKI COCCHIARELLA, Chairman

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JENNIFER KIRBY, Secretary

CH/jk

Additional Exhibits:

**EXHIBIT ([frs83sb0000aad0.PDF](#))**